**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 2360 of 2006**
**To**
**FIRST APPEAL No. 2367 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.S.SHAH**
**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**ORIENTAL INSURANCE CO. LTD - Appellant(s)**
**Versus**
**SIYABHUSEN HASANALI SAIFI & 3 - Defendant(s)**

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**Appearance :**

MR SHALIN N MEHTA for Appellant(s) : 1,
None for Defendant(s) : 1,
RULE UNSERVED for Defendant(s) : 2,
SERVED BY AFFIX.-(R) for Defendant(s) : 3,
MR HASMUKH THAKKER for Defendant(s) : 4,

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**CORAM : HONOURABLE MR.JUSTICE M.S.SHAH**

**and**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 22/02/2007**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)**

This group of First Appeals arises out of a common judgement and separate awards passed by the Motor Accident Claims Tribunal (Main), Rajkot in disposing of claim petitions No.921/2001 and connected petitions.

2. Broadly stated, facts leading to the appeals are that on 11th June, 2001, several persons were travelling in a Tata-Estate Car on a highway going from Madvi to Bhuj. At that time, the Tata-Estate Car met with an accident when it was hit by an incoming truck. The impact resulted into severe injuries to several passengers in the Tata-Estate Car. One minor girl died due to such injuries and other passengers received injuries of different seriousness. These injured persons and relatives of the deceased child therefore, filed separate claim petitions before the Claims Tribunal. The Claims Tribunal after taking into account the deposition of the witnesses and Panchnama of the scene of accident, came to the conclusion that both the drivers were negligent in equal degree in causing the accident. In coming to such a conclusion, the Tribunal was of the opinion that the Panchnama of the scene of accident did not with any degree of clarity pinpoint relative

positions of the vehicles involved in the accident.

3. Regarding the quantum of compensation, the Tribunal passed separate awards to different claimants ranging from Rs. 25,000/- to Rs. 6,59,660/- .

4. When these appeals had come up before this Court for admission hearing along with Civil Applications for condonation of delay, this Court by order dated 25th July, 2006, noted that the appeals are admitted on limited question of apportionment of liability of two insurance companies by determining the question of responsibility of the truck driver as well as of the Tata-Estate Car driver. This Court had therefore, issued notices to other opponents and proceeded to fix the hearing without issuing notice to the claimants.

5. Accordingly, these appeals have been placed before us for final hearing. As noted earlier, since this Court had at the very outset made it clear that the appeals are admitted and entertained only for the limited purpose of apportionment of liability of two insurance companies, we have heard learned advocates appearing for the parties on the question of negligence of the two drivers of the vehicles involved in the accident.

6. Learned advocate Mr. Shalin Mehta appearing for the appellants-the Oriental Insurance Co. ltd. invited our attention to the oral as well as documentary evidence on record. The claimants had themselves deposed before the Claims Tribunal regarding their version of the cause of accident. In addition to oral deposition of some of the claimants, we also have on record the Panchnama of scene of accident duly exhibited. Learned advocate Mr. Shalin Mehta for the appellant insurance company submitted that the claimants were quite incoherent about their deposition with respect to the manner in which the accident took place. He submitted that therefore, the only reliable piece of evidence on record is the Panchnama. He submitted that the Panchnama clearly established that both the vehicles were found on the left hand side of the road going from Mandvi to Bhuj, meaning thereby that the Tata-Estate Car was on its correct side and the truck had travelled on the wrong side of the road and dashed against the Tata-Estate Car. He submitted that the Tribunal was not justified in observing that the Panchnama does not disclose with clarity the relative position of the vehicles.

6.1 He submitted that in view of the inescapable conclusion emerging from the Panchnama that the truck had travelled on the

wrong side of the road, the Tribunal gravely erred in holding the driver of the Tata-Estate Car negligent to the extent of 50% in causing the accident.

7. On the other hand, learned advocate Mr. Hasmukh Thakker appearing for the New India Assurance Company Ltd. who was the insurer of the truck involved in the accident opposed the appeals. He submitted that the Panchnama was not clear in indicating the positions of the vehicles. He submitted that it is possible to deduce from the Panchnama that it was in fact the truck which was lying on its correct side of the road. In short, he submitted that the Tribunal committed no error in equally apportioning the blame of accident.

8. We have heard learned advocates for the parties and also perused the oral as well as the documentary evidence on record. Learned advocate Mr. Shalin Mehta for the appellant insurance company is perfectly justified in pointing out that the deposition of the claimants on the issue of negligence of the drivers is not of any use to conclude with any degree of clarity the exact cause of the accident. These witnesses have given different versions at different places in the examination-in-chief and cross examination. Their evidence is confusing and at times self contradictory. Even the learned

advocate Shri Hasmukh Thakker was not able to reconcile these contradictions. In that view of the matter, the Panchnama of the scene of accident would be the prime document which can throw light on the relative position of two vehicles.

9. The Panchnama records that the vehicles were lying on the road leading from Bhuj to Mandvi. Incidentally, it is a highway and was of sufficient width. The Panchnama clearly records that the truck as well as the Tata-Estate Car were lying on the right side of the road going from Bhuj to Mandvi. It also records that the Tata-Estate Car was lying on the left hand side of the road, on the road going towards Bhuj. In the later portion of Panchnama it is further recorded that on the front of the Car, the truck is lying. Narration of the relative position of the vehicles as contained in the Panchnama, therefore, leaves no manner of doubt that both the vehicles were lying on the left hand side of the road going from Mandvi to Bhuj. It is not in dispute that the Tata-Estate Car was travelling from Mandvi and was going towards Bhuj and the truck was coming from opposite direction i.e. was travelling from Bhuj towards Mandvi. It is therefore, amply clear that the truck had travelled on the wrong side of the road and dashed against the Tata-Estate Car which was being driven on its correct side. In view of the

above clear conclusion, we are unable to uphold the view of the Tribunal that both the drivers were equally negligent in causing the accident. The question therefore, arises as to the degree of negligence that can be apportioned between the two drivers. As noted earlier, the accident took place on sufficiently wide road. The time of accident was approximately 10:30 in the morning. It has come on record that the Tata-Estate Car had applies brakes and the brake marks were visible for about 20ft.

10. Considering all these aspects of the matter, we are of the view that the Tata-Estate Car must also have been driven at a fairly high speed. The driver of the Tata-Estate Car therefore, cannot totally escape the liability of having caused a serious accident. A little more care on his part would have avoided the accident. Considering these aspects of the matter, we find that the truck driver was negligent to the extent of 75% in causing the accident and the Tata-Estate Car driver was negligent to the extent of 25% in causing the accident.

11. In view of this conclusion, the impugned judgement stands modified to the above extent. The appellant i.e. the Oriental Insurance Company ltd. shall satisfy the award to the extent of 25%. The New India Assurance Company ltd. shall satisfy the award to the extent of

75%.

12. By an order dated 2nd February, 2007, passed in Civil Application No.8572/2006 to 8579/2006, we had required the appellant insurance company to deposit additional 25% of the award amount. It may be noted that earlier the appellant had already deposited 25% of the award amounts. In view of modification of the impugned award, it would no longer be necessary for the appellant herein to deposit before the Claims Tribunal additional 25% as directed in our order dated 2nd February, 2007. Thus the said order to that extent stands recalled. The opponent New India Assurance Company ltd. shall deposit the deficit amount of the award by 16th April, 2007 before the Claims Tribunal.

13. With these directions, the appeals are disposed of. Rule made absolute. No costs.

(M.S.Shah,J.)

(Akil Kureshi,J.)

(raghu)